

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**LIQUIDATOR'S MOTION AND INCORPORATED
SUPPORTING MEMORANDUM FOR APPROVAL OF
SETTLEMENT AGREEMENT AND RELEASE WITH
SECURITY LIFE OF DENVER INSURANCE COMPANY**

Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), by his attorneys, the Office of the Attorney General, Sheehan Phinney Bass + Green, Professional Association and Drummond Woodsum, moves for the entry of an order approving the Settlement Agreement and Release dated as of January 21, 2014 (the "Settlement Agreement")¹ by and between the Liquidator and Security Life of Denver Insurance Company ("Security Life").² This Motion is supported by the Affidavit of Robert A. Fleury dated January 30, 2014 (the "Fleury Affidavit"). In support of this motion, the Liquidator states as follows:

¹ In accordance with the Liquidator's Assented-To Motion to Approve Notice and Objection Procedures for Hearing on Motion and Incorporated Supporting Memorandum for Approval of Settlement Agreement and Release with Security Life of Denver Insurance Company and this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012, a redacted copy of the Settlement Agreement is attached hereto as Exhibit A. Parties wishing to review the unredacted Settlement Agreement may do so by contacting the Office of the Liquidator and following the Court approved procedures, including the execution of a confidentiality agreement. To the extent the redactions are of personal identifying information that an individual has requested be kept confidential, the Liquidator will not reveal such information without authorization from the particular individual or further order of the Court.

² Security Life has consented to the filing of this Motion and wholly supports the approval of the Settlement Agreement. To the extent that any representation is based solely on the Liquidator's books and records, Security Life neither agrees with nor disputes any such representation.

Background

1. In 2003, Noble Trust was organized and chartered under the laws of the State of New Hampshire as a non-depository banking corporation, and subject to regulation by the New Hampshire Banking Department (the "Banking Department"). Colin P. Lindsey ("Lindsey") was the president of Noble Trust and chairman of its board of directors.

2. As a result of irregularities discovered by the Banking Department's 2008 examination of Noble Trust, on February 11, 2008, Commissioner Peter Hildreth commenced a liquidation proceeding by filing a Verified Petition for Liquidation (the "Liquidation Petition") in this Court, seeking the appointment of a liquidator for Noble Trust pursuant to RSA 395:1, as well as related injunctive relief against Noble Trust pending this Court's ruling on the Liquidation Petition (the "Liquidation Proceeding").

3. On March 27, 2008, this Court entered an order (the "Liquidation Order") appointing Commissioner Hildreth as liquidator of both Noble Trust and its parent company, Aegean Scotia Holdings, LLC ("Aegean Scotia"). The Liquidator is the duly appointed successor liquidator of Noble Trust and Aegean Scotia by order of this Court dated February 1, 2013.

4. Prior to the commencement of the Liquidation Proceeding, Security Life issued life insurance policy number 1612111 (the "Policy" or the "Waters Policy"), dated October 26, 2006 on the life of Karl M. Waters, Jr. (the "Insured"), who is reflected in Noble Trust's books and records as a Noble Trust client. The record owner of the Policy is the Karl Martin Waters, Jr. Irrevocable Life Insurance Trust (the "Trust") as to which Noble Trust was co-trustee. According to Noble Trust's records, Noble Trust paid or caused to be paid to Security Life premiums in the amount of \$500,000 on account of the Policy. Fleury Affidavit ¶ 3. The premiums for the Policy were financed by means of loans totaling \$500,000 from trusts

established for Noble Trust investors as to which Noble Trust served as trustee, trust protector and/or trust administrator. Id. The Policy was collaterally assigned by Noble Trust in its capacity as trustee of the Trust, to Noble Trust in its capacity as creditor of the Trust. The collateral assignment was duly acknowledged and recorded by Security Life on November 15, 2007. Id.

5. The records of Security Life further indicate that Security Life paid \$560,718.50 in commissions in connection with its issuance of the Policy. Fluery Affidavit ¶ 4.

6. The Liquidator contends that the Policy is part of the liquidation estate being administered by the Liquidator pursuant to the Liquidation Order because, among other things, Noble Trust is trustee of the Trust, which is the record owner of the Policy. As Trustee, Noble Trust holds legal title to the Policy. Moreover, Noble Trust, in its capacity as creditor of the Trust, holds a collateral assignment of the Policy and all rights related to the Policy to secure the amount of the premium advanced by Noble Trust to the Trust. The Liquidator also asserts an interest in the Policy because the procurement and issuance of the Policy and other life insurance policies procured by Noble Trust was a critical part of the fuel that permitted Lindsey to perpetuate the Noble Trust Ponzi scheme.³ Security Life and other issuers of life insurance policies paid substantial commissions directly or indirectly to Lindsey or entities controlled by him that Noble Trust then distributed to existing investors as fictitious profits. The Liquidator has no reason to believe Security Life had any knowledge of Lindsey's surreptitious dealings. Noble Trust then used the commission income to help fund the premiums to procure other fraudulently procured life insurance policies, thereby perpetuating the Noble Trust Ponzi scheme. Fluery Affidavit ¶ 5.

³ Security Life disagrees with this proposition, and others asserted by the Liquidator herein, and reserves all of its rights in that regard.

The Noble Trust Ponzi Scheme

7. Lindsey was operating Noble Trust as a Ponzi Scheme at the time that the Policy was issued. Between the time when Noble Trust sustained its undisclosed losses due to the Sierra Investments and the time when the Banking Department took control of Noble Trust (March 2008), Noble Trust continued to solicit and accept funds from clients totaling at least \$4.5 million under the same promise of 12% returns that had been made to existing clients. Fleury Affidavit ¶ 6. Instead of investing the new clients' money in legitimate investments, however, Noble Trust used some of these funds to pay fictitious profits to other clients and to redeem principal and pay interest to clients who terminated their relationship with Noble Trust. Id. However, the flow of incoming investments was insufficient for Lindsey and Noble Trust to maintain the concealment of the Sierra Investment losses. Id.

8. To continue the fraudulent concealment of its losses and perpetuate the Noble Trust Ponzi scheme, Lindsey devised and carried out a plan based upon the procurement and issuance of life insurance policies for the elderly, generally with face values between \$3 million and \$10 million. Fleury Affidavit ¶ 7. At Lindsey's direction, Noble Trust, acting as trustee or trust protector, caused applications to be submitted to various insurers, including Security Life. Many of the applications misrepresented the applicants' net worth or income, or averred that coverage was being sought as a means of individual estate planning. Id. Many of the insurance policy applications misstated the source of the premium financing, the terms of the premium financing, or both. Id. In reality, many of the individual insureds were persuaded to apply for insurance in part through promises of profits from the sale of their policies on the lucrative secondary market after the contestability period expired. Id. These insureds had little or no expectation that either they, or any other person with an insurable interest in their lives, would ever receive any death benefit from the policies. Id.

9. In most cases, once the policies were procured and issued, the insureds were not required to pay *any* premiums to keep the policies in force through the end of the two-year contestability period. Fleury Affidavit ¶ 8. Instead, the premiums were paid on their behalf by means of limited-recourse premium financing loans (the "Premium Finance Loans"). Neither the insured nor any other individual had liability for repayment of the Premium Finance Loans; recourse was limited to the insurance trust, the sole asset of which was the life insurance policy. Id. The Premium Finance Loans were often funded by other Noble Trust clients and their trusts, investment management accounts or individual retirement accounts. Id. Thus, the insureds under the policies were promised and received "something for nothing" – they paid no premiums, incurred no personal liability for the Premium Finance Loans, and were promised large windfalls for selling their policies after the contestability period expired.

10. In most instances, when the policies were placed in force, Lindsey or Balcarres were paid substantial commissions (the "Commissions") directly by the insurers or indirectly by the agents and producers that submitted the policy application. Fleury Affidavit ¶ 9. The commissions were often equal to or greater than the first year annual premium for the policies. Some of the proceeds of the Commissions were used to fund premium payments for other policies or to repay other Premium Finance Loans. Other proceeds of the Commissions were used to cover up the loss of the Sierra Investments through distributions of fictitious profits or the repayment of principal to Noble Trust clients who had invested in Sierra, thus making it appear that the Sierra Investments were still performing according to their terms. Id. Upon information and belief, Lindsey and Noble Trust also intended to sell some of the policies (or the beneficial interests therein) on the lucrative secondary market to perpetuate the Noble Trust Ponzi scheme and continue to cover up the Sierra losses. Id.

11. The Waters Policy fits the model described above. Mr. Waters paid nothing to procure the Policy. The premiums were funded by loans from the accounts of other Noble Trust investors. Fleury Affidavit ¶ 10. The loans are without recourse to Mr. Waters. Of the Commissions paid by Security Life in connection with the Policy, the records of Noble Trust indicate that at least \$200,000 was paid, indirectly, to Lindsey. Id.

12. Thus, Noble Trust was operated as a Ponzi Scheme that utilized fresh investment funds from its clients and the Commissions to pay fictitious profits to its existing investors, to return principal to investors and to fund limited recourse Premium Finance Loans. The Waters Policy was an integral part of that scheme. Fleury Affidavit ¶ 11.

Summary of Settlement Agreement⁴

13. Under the Settlement Agreement, the Policy shall be deemed to be void *ab initio* as of January 21, 2014 (the "Effective Date"), and as a consequence thereof, no individual or entity shall have any rights with respect to the Policy.

14. The Settlement Agreement provides that Security Life shall pay the Liquidator a litigation settlement payment. The Settlement Agreement requires that the amount of the settlement payment be kept confidential.

15. Security Life and the Liquidator shall release each other from all claims in connection with, arising out of, or in any way related to the subject matter of the Policy. Security Life reserves the right to institute any action or pursue any claims it might have against the Insured, Global Financial Investors, Griffin Financial Group, Inc., Ted N. Griffin or Kerry Piandes.

⁴ Notwithstanding the recitation in this Motion of the terms of the Settlement Agreement, this is a summary only and all parties in interest are urged to read the Settlement Agreement. In the event of any conflicts or inconsistencies between the summary contained in the Motion and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

16. By this Motion, and as provided for in the Settlement Agreement, the Liquidator seeks to have all of the releases set forth in the Settlement Agreement be binding on any and all parties asserting an interest in the Policy to the fullest extent of this Court's jurisdiction, and to forever bar any and all claims concerning the matters contemplated by the Settlement Agreement or the Policy, as set forth in Paragraph 17.

17. No person or entity that is or ever was the insured under the Policy, the owner or beneficiary of the Policy, the holder of a beneficial interest in a trust that is the owner or beneficiary in, the premium financier of, or an investor in, the Policy, who is or ever was an investor in Noble Trust or Aegean Scotia (collectively "Investors"), or who is or ever was a creditor of Noble Trust or Aegean Scotia (collectively "Creditors") shall commence, file, or prosecute a suit, arbitration, or other legal proceeding in any court or tribunal or before any arbitral body or panel, or assert any claim or cause of action in any such proceeding or forum, against Security Life or any of its predecessors, successors, assigns, or affiliates, or against their respective directors, officers, or employees in their capacities as such, that is in any manner based on, or seeks any remedy or relief relating to: (1) Security Life having entered into and complied with the Settlement Agreement (2) any such insured, owner, beneficiary, investor or creditor having either (A) dealt or contracted with the Liquidator, Noble Trust, and/or Aegean Scotia, and/or each of their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies (collectively hereinafter the "Noble Parties") or (B) invested or agreed to invest in the Policy, in a secondary market transaction related to the Policy, or in rights to or a fractional interest in the Policy or (C) been named or designated, or agreed or intended to have been named or designated, as a beneficiary of the Policy, regardless of whether any such designation ever was, or was ever agreed or intended to be, irrevocable. Any and all claims and

causes of action held by or accruing to any Investors and/or Creditors against Security Life within the scope of this paragraph, however denominated, regardless of the allegations, facts, law, theories, or principles on which they may be based, including but not limited to claims for damages, contribution, or indemnity, against Security Life, by any Investor and/or Creditor and by any person who acquired an interest in the Policy from or through an Investor or Creditor, including but not limited to persons that are parties to this proceeding and all others who receive notice of this Motion, the Approval Order (defined below) or of this paragraph, whether such claims now exist or have accrued or may in the future exist or accrue, shall be extinguished, discharged, satisfied, and otherwise unenforceable, all to the fullest extent of the Court's jurisdiction.

18. Notwithstanding anything in the preceding paragraph, however, nothing in the Settlement Agreement shall prevent any Investor or Creditor from continuing to assert a timely filed claim against the liquidation estate of Noble Trust and Aegean Scotia.

19. The surrender of the Policy shall be free and clear of all liens, claims and interests in the Policy of any kind or nature whatsoever held by any individual or entity. All such liens, claims and interests against the Policy shall be subject to allowance or disallowance as part of the claims adjudication process in the Liquidation Proceeding, including under any Plan of Liquidation that this Court may approve.

20. By its terms, the Settlement Agreement does not become effective unless and until the entry of a final order (the "Approval Order") by the Court in the Liquidation Proceeding approving the Settlement Agreement. The Approval Order shall become final on the date that it shall have become non-appealable or, in the event of an appeal(s), on the date that it has been affirmed after all appeals therefrom have been exhausted.

The Liquidator Has the Authority To Terminate the Waters Policy

21. Noble Trust is trustee of the Trust, which owns the Policy. Under the terms of the Liquidation Order, the Liquidator is authorized and directed to take control of all Noble Trust's assets, *specifically* including life insurance policies held in trusts as to which Noble Trust is trustee, and to preserve and liquidate them for the benefit of Noble Trust's clients and creditors. The Liquidation Order provides that, "The Liquidator is directed forthwith to take possession of and secure the assets, property, books, records, accounts, and other documents of [Noble Trust], Balcarres, and Aegean Scotia and to administer them under the orders of this Court, and is vested with exclusive possession, custody and control of all of the property . . . of [Noble Trust], Balcarres and Aegean Scotia, wherever located and by whomever possessed . . ." *Id.* at 3, ¶ (d). The Liquidator is also "authorized to transfer, invest, re-invest and otherwise deal with the assets and property of [Noble Trust] and Aegean Scotia as to effectuate their liquidation" *Id.* at 3, ¶ (e).⁵ Legal title to the Policy and other insurance policies rests in Noble Trust and, therefore, the policies are property of Noble Trust within the meaning of the Liquidation Order. Lest there should be any doubt, the Liquidation Order expressly provides that, for purposes of the Noble Trust liquidation, Noble Trust shall include "all sub-trusts and protected trusts in which [Noble Trust] holds an interest, whether directly or indirectly." *Id.* at 3, ¶ (b). The Waters Policy is held in such a trust, and, therefore, the Liquidator is authorized and directed to exercise control over the Policy.

22. The Liquidation Order *specifically* identifies life insurance policies held by Noble Trust as trustee as property of Noble Trust and forbids third parties from exercising control over that property:

⁵ The Liquidator is not acting as trustee, co-trustee, or trust protector for any of the trusts or sub-trusts established by Noble Trust for its clients. The Liquidation Order does not confer that status on the Liquidator, and the Liquidator has not sought that status except upon motion to this Court for specified purposes.

[A]ll persons are hereby permanently enjoined and restrained from . . . any act to obtain possession of property of NTC, Balcarres, or Aegean Scotia, or to exercise control over property of those entities, including, without limitation, any act to terminate, cancel, revoke, void or otherwise alter any policies of insurance (i) issued to or for the benefit of NTC or any of its clients, or (ii) in which either NTC, Balcarres, or Aegean Scotia holds an interest (including as trustee, protector, or as property of a sub-trust), or (iii) which were issued through Balcarres for the benefit of NTC's clients; unless such termination, cancellation, revocation or alteration shall have been first approved by either the Liquidator or this Court

Id. at 4-5, ¶ (j)(3). Moreover, the Order Clarifying Order Appointing Liquidator entered by this Court on June 10, 2008, makes clear that: "The Liquidation Order is intended and means to prevent and enjoin the Policies . . . from lapsing for nonpayment or nonperformance of any obligation due, overdue, or becoming due thereunder"

23. The Liquidator's treatment of the Policy is also consistent with the rights of Noble Trust as collateral assignee of the Policy. The Collateral Assignment expressly provides that the assignee of the Policy may "surrender the policy and receive the surrender value." Fleury Affidavit ¶ 3.

24. The Liquidator's treatment of the Policy in the Settlement Agreement is consistent with prior settlement agreements approved by this Court and, more generally, the treatment of assets that remain in a Ponzi scheme when the scheme is discovered and terminated.⁶ Courts in Ponzi scheme cases uniformly endorse the pooling of assets and pro rata distribution where "the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders." Kathy Bazoian Phelps & Steven Rhodes, The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes § 6.05[1][b] (2012) (quoting S.E.C. v. Credit Bancorp, Ltd., 290 F.3d 80, 88-89 (2d Cir. 2002)); see also Cunningham v.

⁶ Security Life neither agrees with nor disputes any of the Liquidator's legal arguments in support of the Liquidator's authority to allocate assets that remain in a Ponzi scheme. Security Life reserves the right to contest the Liquidator's position in the event that the Settlement Agreement is not approved by this Court.

Brown, 265 U.S. 1, 13 (1924); U.S. v. Durham, 86 F.3d 70, 72 (5th Cir. 1996); Hirsch v. Arthur Anderson & Co., 72 F.3d 1085, 1088 n.3 (2d Cir. 1995); S.E.C. v. Elliott, 953 F.2d 1560, 1569 (11th Cir. 1992); S.E.C. v. Byers, 637 F.Supp.2d 166, 179-80 (S.D.N.Y. 2009); Jobin v. Youth Benefits Unlimited (In re M&L Bus. Mach. Co.), 164 B.R. 148, 151 (D. Colo. 1994); Gaffney v. Rubino (In re Builders Capital & Servs., Inc.), 317 B.R. 603, 611 (Bankr. W.D.N.Y. 2004); Henderson v. Allred (In re W. World Funding, Inc.), 54 B.R. 470, 475-76 (Bankr. D. Nev. 1985). Courts have deemed these equitable principles "especially appropriate for fraud victims of a 'Ponzi scheme' In such a scheme, whether at any given moment a particular customers' assets are traceable is 'a result of the merely fortuitous fact that the defrauders spent the money of other victims first.'" Credit Bancorp, 290 F.3d at 89 (internal citations omitted). Such cases "call strongly for the principle that equality is equity" Cunningham, 265 U.S. at 13.

25. Courts in Ponzi scheme liquidations and receiverships have applied the principle of pooling even where a claimant can identify its asset among the property of the estate. For instance, in S.E.C. v. Elliott, investors in a Ponzi scheme transferred identifiable securities to the Ponzi perpetrator. Prior to the receivership, the perpetrator sold some, but not all, of the securities. The investors objected to the pooling and ratable distribution of their identifiable securities, but the trial court approved the receiver's plan and the Eleventh Circuit affirmed, holding that:

These investor/appellants are attempting to recover the securities that Elliott retained with their names on them. Legally, these investors occupy the same position as the other investors whose securities were sold. All investors were defrauded. All investors were cleverly persuaded to part with their securities. . . . "To allow any individual to elevate his position over that of other investors similarly 'victimized' by asserting claims for . . . reclamation of specific assets . . . would create inequitable results, in that certain investors would recoup 100% of their investment while others would receive substantially less. . . . [I]n the context of this receivership the remedy . . . to trace and reclaim specific assets . . . is disallowed as an inappropriate equitable remedy."

We cannot say that the district court abused its discretion A district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. . . . [S]ince these creditors occupied the same legal position as other creditors, equity would not permit them a preference; for "equality is equity."

S.E.C. v. Elliott, 953 F.2d at 1569-70 (internal citations omitted). Similarly, in Credit Bancorp, the Second Circuit considered "whether shares of stock transferred to a company that defrauded the transferor and numerous other victims can be included in the receivership estate of the defrauding company for purposes of a *pro rata* distribution to the defrauded victims." Credit Bancorp, 290 F.3d at 82. The court noted that the particular investor's "claim is distinguishable from that of many of CBL's customers only in that the eight million Vintage Petroleum shares it deposited were not converted into cash and are currently being held in CBL's brokerage accounts." Id. at 85. The court then rejected the investor's arguments for reclamation and affirmed the district court's distribution scheme:

[W]hatever . . . interest [the investor] might have in the . . . shares . . . does not defeat the equitable authority of the District Court to treat all the fraud victims alike . . . and order a *pro rata* distribution. Courts have favored *pro rata* distribution of assets where, as here, the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders. . .

Id. at 89 (internal citations omitted).

26. The fact that the Policy was held in a trust does not alter the Liquidator's authority to deal with the policy or the appropriateness of his proposed exercise of that authority. As noted above, the Liquidation Order makes clear that the Policy is property of Noble Trust to be administered by the Liquidator. The Liquidation Order itself brings property held in trust into the Noble Trust liquidation estate. Moreover, the Trust, and the other irrevocable life insurance trusts that were formed to hold the high value life insurance policies procured by Noble Trust, were a critical part of the Noble Trust Ponzi scheme. A trust may be unenforceable where its

purpose is fraudulent, illegal, or contrary to public policy. 2 Austin Scott, William Fratcher & Mark Ascher Scott and Ascher on Trusts § 9.1 at 468-71 (5th ed. 2006). "[C]ourts have held a large . . . group of trusts . . . invalid[] on the ground that their enforcement would violate public policy." Id. § 9.3 at 472; see also Restatement (Second) of Trusts § 62 (1959); Restatement (Third) of Trusts § 29(c) (2003). The New Hampshire Legislature has recognized that trusts may be put to an improper purpose with respect to so-called Stranger-originated life insurance. RSA 408-D: XVI provides: "Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition on wagering on life."

27. As a general matter, the interests of public policy obviously include discouraging fraudulent activity. Giving effect to the insurance trusts, which themselves were a central element of the Noble Trust Ponzi scheme, would promote and perpetuate, rather than discourage, Noble Trust's fraud. Moreover, as described above, in the context of Ponzi schemes, public policy and sound equitable principles also demand the pooling of assets for pro rata distribution to similarly situated creditors. There is ample legal precedent supporting the authority of courts in Ponzi scheme cases to ignore the existence of separate legal entities in order to ensure a fair distribution to all claimants. See, e.g., S.E.C. v. Funding Res. Grp., 233 F.3d 575 (5th Cir. 2000); Marchese v. Leverage Grp., 2009 U.S. Dist. LEXIS 13318 (E.D.N.Y. Feb. 20, 2009); In re Burton Wiand Receivership Cases, 2008 U.S. Dist. LEXIS 27929 (M.D. Fla. Mar. 26, 2008); In re Nat'l Century Fin. Enters., Inc., Inv. Litig., 2006 U.S. Dist. LEXIS 16612 (S.D. Ohio Feb. 27, 2006); Fid. Nat'l Title Ins. Co. of NY v. Intercounty Nat'l Title, 2002 U.S. Dist. LEXIS 16002 (N.D. Ill. July 8, 2002).

28. This Court also possesses broad power to grant relief as a court of equity. See RSA 498:1; see also Boynton v. Figueroa, 154 N.H. 592, 608 (2006) (holding that the court has

"broad and flexible equitable powers which allow it to shape and adjust the precise relief to the requirements of the particular situation."). The statute governing bank liquidations further supplements this equitable power. See RSA 395:2 (court may issue orders "as equity may require"); see also In re Liquidation of The Home Ins. Co., 154 N.H. 472, 482, 488, 490 (2006) (discussing equitable powers in context of bank liquidation); 1 Ralph E. Clark, The Law and Practice of Receivers § 258 (3d ed. 1959) (discussing equitable powers of receivers generally). Courts' equitable powers with respect to insolvent estates are "invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done." Pepper v. Litton, 308 U.S. 295, 305 (1939). Strictly applying trust principles in this case so as to deny the Liquidator the ability to deal with the Policy would elevate form over substance and prevent substantial justice from being accomplished.

29. In the absence of the Settlement Agreement, the Liquidator would seek to have the Policy declared void and to compel Security Life to return to the liquidation estate of Noble Trust the premium paid on account of the Policy. In the course of negotiating the Settlement Agreement, Security Life represented that if the settlement had not been agreed upon, it would seek a ruling that the Policy was not properly included within the liquidation estate and that the Liquidator has no valid interest in the Policy. Security Life also contended that it was not required to return any of the premiums to the Liquidator due to the equitable offset of its claims arising from the substantial commissions it paid in connection with the Waters Policy, and further asserted that courts have permitted insurers to void policies procured through fraud or that lack a valid insurable interest without requiring the insurer to refund premiums. Security Life would also assert the right to impose various charges, expenses and other costs provided for under the Policy that would reduce the amount of premiums that it would be required to return in

any event, even without respect to its claim of setoff. The Liquidator would dispute the merits of these legal theories.

30. The Liquidator has agreed, in a letter agreement with Security Life, that if the Settlement Agreement is not approved and the parties cannot achieve a substitute settlement to their mutual satisfaction, the Liquidator will not object to a Motion brought by Security Life in the Superior Court for the sole purpose of seeking relief from the Order Appointing Liquidator and the Order Clarifying Order Appointing Liquidator in order to file a complaint in the New Hampshire Superior Court seeking a declaration as to the validity of the Policy. The letter agreement does not affect or limit the right of the Liquidator to seek return of the premiums paid on account of the Policy or to seek any other relief in respect to the Policy.

31. The Liquidator and Security Life believe the Settlement Agreement is fair, reasonable and adequate, and is the result of arms-length negotiations between the parties and their counsel. The Settlement Agreement will result in the payment of a material sum to the estate by Security Life. Therefore, the Settlement Agreement maximizes the value of the liquidation of Noble Trust by creating a fund that will be available to claimants of the estate, subject to further order of this Court, relieving the estate of further costs and from the potential risk of litigation with Security Life.

32. The Liquidator therefore believes that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and that the settlement resolves the pending dispute between the Liquidator and Security Life on terms that are advantageous to the liquidation of Noble Trust and Noble Trust creditors.

33. Accordingly, the Liquidator believes that approval of the Settlement Agreement is in the best interests of Noble Trust, its creditors, and all parties in interest. See In re Liquidation of The Home Ins. Co., 154 N.H. 472, 489-90 (2006).

Filing and Service of Objections

34. Objections to this motion, if any, must be in writing and filed with the Clerk of the Court (Office of the Clerk, Merrimack County Superior Court, 163 North Main Street, Concord, New Hampshire, 03302), and served upon the following parties so as to be actually received on or before the objection deadline imposed by the Court; *i.e.* any objections filed with the Court must also be either hand delivered to counsel or, if served by mail, then also transmitted electronically to counsel that same day:

- (a) attorneys for the Liquidator: (i) Office of the Attorney General, 33 Capitol Street, Concord, New Hampshire 03301-6397, Attn.: Peter C.L. Roth, Esq., fax: (603) 223-6269, email: peter.roth@doj.nh.gov, and (ii) Sheehan Phinney Bass + Green Professional Association, 1000 Elm Street, P.O. Box 3701, Manchester, New Hampshire, 03105-3701, Attn.: Christopher M. Candon, Esq., fax: (603) 627-8121, email: ccandon@sheehan.com;
- (b) attorneys for Security Life: Drinker Biddle & Reath LLP, One Logan Square, Suite 2000, Philadelphia, Pennsylvania 19103, Attn: Stephen A. Serfass, Esq., fax: (215) 988-2757, email: stephen.serfass@dbr.com; and
- (c) counsel of record in this proceeding (whose names and addresses may be obtained from the Clerk's Office).

WHEREFORE, the Liquidator requests that the Court (i) enter an order, in substantially the same form submitted herewith as Exhibit B, granting the Motion and approving the Settlement Agreement, and (ii) grant the Liquidator such other and further relief as is just.

Respectfully submitted,

Dated: January 30, 2014

GLENN A. PERLOW, BANK COMMISSIONER
OF THE STATE OF NEW HAMPSHIRE,
AS LIQUIDATOR OF NOBLE TRUST COMPANY

By his attorneys,

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EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement"), is made and entered into this 21st day of January, 2014 (the "Effective Date"), by and between Security Life of Denver Insurance Company ("Security Life") and Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as duly appointed Liquidator (the "Liquidator") for Noble Trust Company ("Noble") and Aegean Scotia Holdings, LLC ("Aegean") (collectively, the "Parties" and each individually a "Party").

WHEREAS, On October 26, 2006, Security Life issued life insurance policy number 1612111 (the "Policy") on the life of Karl M. Waters, Jr. (the "Insured"), who is reflected in Noble's books and records as a client of Noble; and

WHEREAS, Noble is the trustee of the Karl Martin Waters, Jr. Irrevocable Life Insurance Trust (the "Trust"), which is the record owner and beneficiary of the Policy; and

WHEREAS, on November 2, 2007, the Policy was collaterally assigned to Noble, which was acknowledged and recorded by Security Life on November 15, 2007; and

WHEREAS, on February 11, 2008, Peter C. Hildreth, Bank Commissioner of the State of New Hampshire, filed a petition for liquidation of Noble in the Superior Court of Merrimack County, New Hampshire (the "Court"), initiating the matter captioned *In re Liquidation of Noble Trust Company*, Docket No. 08-E-0053 (the "Liquidation Proceeding"); and

WHEREAS, on March 30, 2008, the Court entered an order in the Liquidation Proceeding (the "Order Appointing Liquidator") appointing Peter C. Hildreth to act as liquidator for Aegean and Noble (which, for the purposes of the Liquidation Proceeding, was deemed to include all sub-trusts and protected trusts in which Noble held an interest, directly or indirectly, including serving as trust protector) and to take possession of and control all assets of Aegean

and Noble, and granting injunctive relief with respect to certain insurance policies that have been asserted by the Liquidator to be a part of the liquidation estate (including the Policy), all as set forth in the Order Appointing Liquidator; and

WHEREAS, on June 11, 2008, the Court entered an order in the Liquidation Proceeding (the "Order Clarifying Order Appointing Liquidator") clarifying its injunction against the insurers (including Security Life) that issued life insurance policies (including the Policy) subject to the Order Appointing Liquidator, to include prohibiting such insurers from claiming that any such policy either had or could lapse, terminate, or otherwise expire by reason of nonpayment of premium without either the Liquidator's consent or an order of the Court; and

WHEREAS, on November 13, 2009, the Liquidator obtained a judgment in the Court against Balcarres Group, LLC ("Balcarres"), an entity inadvertently misidentified in the Order Appointing Liquidator as a wholly-owned subsidiary of Noble, pursuant to which judgment the assets of Balcarres were declared to be property of the Liquidation Proceeding; and

WHEREAS, the Parties now desire to resolve any and all disputes related to the Policy, Security Life's involvement in the Liquidation Proceeding related to the Policy, and any and all claims that the Liquidator and Security Life may have against each other therein concerning or related to the Policy, to buy their peace, and to avoid the attendant costs and expenses associated with litigation with one another, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and warranties set forth herein, including the above recitals, all of which are an integral part of this Agreement, the Parties agree as follows:

1. **Entry of the Approval Order.** Within twenty-one (21) business days after the latest of the execution of this Agreement by each of the Parties, the Liquidator shall file a motion

(the "Motion") in the Liquidation Proceeding seeking entry of an order (proposed to the Court in a form approved by the Liquidator and acceptable to Security Life and referred to herein as the "Approval Order"): (1) approving the Agreement; (2) granting relief from the Order Appointing Liquidator and the Order Clarifying Order Appointing Liquidator such that the Policy is deemed void *ab initio*; and (3) providing for the Bar of Claims (as defined and described in Paragraph 20(c)).

The Parties agree that the covenants contained in this Agreement are expressly conditioned upon the entry by the Court in the Liquidation Proceeding of the Approval Order, which must not materially alter any of the terms of this Agreement, and which shall have become final and no longer subject to appeal, or in the event of an appeal, shall have been affirmed after all appeals therefrom have been exhausted ("Final").

2. Surrender of the Policy.

(a) **Delivery of Policy Documents.** Within ten (10) business days of the Approval Order becoming Final, the Liquidator will transmit to Security Life a signed certification (the "Certification"), in the form attached as Exhibit 1, that he relinquishes all rights and interest in all documents, copies and electronic records generated or produced by or on behalf of Security Life and relating to the Policy (the "Policy Documents"), including the original Policy. The provision of the Certification shall be deemed a constructive tender of the Policy Documents, and shall be the surrender by the Liquidator of the Policy as confirmation that it is void *ab initio*.

However, nothing in this Paragraph 2(a) shall prevent the Liquidator from utilizing any of the Policy Documents as evidence in the course of administering any claim against the liquidation estate in connection with the Policy, and the Liquidator expressly reserves the right to

so utilize the Policy Documents. Any such use by the Liquidator of the Policy Documents will not impact the fact that the Policy has been surrendered and is void *ab initio*.

(b) **Surrender of the Policy.** Regardless of the degree to which the Liquidator transmits the Policy Documents to Security Life and/or provides the Certification to Security Life, the Policy shall be deemed to be officially surrendered as soon as the Settlement Funds (defined in Paragraph 3 of this Agreement) are paid to the Liquidator as detailed in Paragraph 3 of this Agreement.

3. **Payment of Settlement Funds by Security Life.** Within ten (10) business days after the Liquidator's delivery of the Certification to Security Life, but in any event no later than twenty (20) business days after the Approval Order becoming Final, Security Life shall wire transfer to the Liquidator the amount of [REDACTED] (the "Settlement Funds") as a settlement payment.

4. **The Policy is Void *Ab Initio*.** Upon the Approval Order becoming Final, as set forth in Paragraph 1, the Policy shall no longer be subject to the Order Appointing Liquidator or the Order Clarifying Order Appointing Liquidator, and shall be deemed to be void *ab initio* as of the Effective Date. At that time, no individual or entity shall have any rights with respect to the Policy.

5. **Security Life Release of Claims.** For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Security Life, and each of its respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, hereby irrevocably and unconditionally releases and forever discharges the Liquidator, Noble and Aegean, and each of their respective predecessors, successors, heirs, administrators, assigns,

partners, officers, directors, employees, agents (except for Producers as defined in Paragraph 8 below, the treatment of which is governed by Paragraph 8 below), representatives, trustees, attorneys, affiliates and all affiliated companies from any and all actions, causes of action, suits, debts, liens, contracts, rights, agreements, obligations, promises, liabilities, claims, demands, damages, controversies, losses, costs, and expenses (including attorneys' fees and costs), of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, which Security Life now has, owns, holds, or claims, at any time heretofore had, owned, held, or claimed, or may at any time in the future have, own, hold, or claim in connection with, arising out of, or in any way related to the subject matter of the Policy.

6. **Release of Claims Against Security Life.** For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Liquidator, on behalf of Noble and Aegean, and each of their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, hereby irrevocably and unconditionally releases and forever discharges Security Life, and each of its respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents (other than "Producers," as defined in Paragraph 8, the treatment of which is governed in accordance with Paragraph 7), representatives, trustees, attorneys, affiliates and all affiliated companies from any and all actions, causes of action, suits, debts, liens, contracts, rights, agreements, obligations, promises, liabilities, claims, demands, damages, controversies, losses, costs, and expenses, including attorneys' fees and costs of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, which the Liquidator, Noble, or Aegean now have, own, hold, or claim, at any time heretofore had, owned,

held, or claimed, or may at any time in the future have, own, hold, or claim in connection with, arising out of, or related to the Policy.

7. **Liquidator, Noble, and Aegean's Rights as to Other Entities.** The Liquidator, on behalf of Noble and Aegean, and each of their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies, hereby covenants and agrees not to pursue any action related to the subject matter of the Policy against any person or entity (including the Producers, as defined in Paragraph 8) not released in this Agreement. However, if such person or entity asserts a claim (whether legal or equitable, in any form or manner) against the liquidation estate or in connection with the Liquidation Proceeding, the Liquidator reserves the right to object to and defend against any such claim. The Liquidator hereby covenants and agrees that, in the course of defending any claim asserted against the liquidation estate by any such person or entity, he will not assert any claims seeking affirmative relief against such person or entity. For the avoidance of any doubt, the purpose of this provision is to ensure that Security Life is not subject to liability, whether third-party liability, liability for indemnification, or any other liability, as a result of any claim brought by the Liquidator.

The Liquidator agrees, upon request by Security Life, to disclose copies of any documents and disclose any additional information acquired in defense of or pursuit of the actions described in this Paragraph 7, to the extent that such disclosure is not prevented by the attorney-client privilege, the attorney work-product privilege, a confidentiality order or undertaking, or any other applicable privilege.

8. **Rights in Relation to the Producers.** Security Life and each of its respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees,

agents, representatives, trustees, attorneys, affiliates and all affiliated companies, reserves the right to institute any action or pursue any claims it might have against Global Financial Investors, Griffin Financial Group, Inc., Ted N. Griffin, Kerry Piandes, or any of their respective partners, officers, directors, broker general agencies, agents, affiliates and affiliated companies,(collectively, the "Producers").

Security Life agrees, upon request by the Liquidator, to disclose copies of any documents and disclose any additional information acquired in defense of or pursuit of the actions described in this Paragraph 8, to the extent that such disclosure is not prevented by the attorney-client privilege, the attorney work-product privilege, a confidentiality order or undertaking, or any other applicable privilege.

9. **Security Life's Claims.** Security Life has the right to pursue any and all claims it has against the Insured. In addition, Security Life has the right to pursue any and all claims it has against the Producers as described in Paragraph 8 of this Agreement.

10. **Attorneys' Fees and Costs.** The Parties expressly understand and agree that other than as specifically set forth herein, all attorneys' fees and any and all costs and expenses related to the negotiation and preparation of this Agreement and the Motion shall be borne by the Party that incurred such fees, costs, and expenses, and will not be recovered by either Party from the other Party.

11. **No Admission of Liability.** All of the claims and defenses impacted by this Agreement are denied and contested by each of the Parties, and nothing contained herein shall in any way be construed as or constitute an admission of fault, liability, or responsibility on the part of either of the Parties. Each of the Parties denies liability and responsibility and is entering into this Agreement in order to buy the Party's peace and avoid further litigation with each other and

the costs and expenses associated therewith, and in so doing, each of the Parties denies any and all liability and defenses and states that the settlement made herein is entirely a compromise.

12. **Complete Agreement.** This Agreement and the exhibits to this Agreement constitute the entire agreement between and among the Parties pertaining to the subject matter contained in it. This Agreement supersedes all prior and contemporaneous representations and understandings of the Parties. No supplement, modification, or amendment to this Agreement shall be binding unless executed in a writing signed by all of the Parties, expressly stating that modification is intended.

13. **Confidentiality.** This Agreement, the settlement contained herein and the terms thereof shall be confidential except for legal, regulatory and accounting purposes. The Liquidator acknowledges that Security Life may disclose the amount of the Settlement Funds as may be necessary or appropriate in connection with the administration of Security Life's business, including in communications with reinsurers, the Producers, its lawyers, accountants, auditors, and management. Among other things, Security Life acknowledges that it will be necessary for the Liquidator to disclose this Agreement when filing with the court the Motion defined in Paragraph 1 of this Agreement and seeking the Approval Order. The Liquidator has obtained an order permitting this Agreement to be filed under seal as to the Settlement Funds paid as consideration for this Agreement, and that conditions disclosure of the amount of the Settlement Funds on compliance with such confidentiality obligations as set forth in the order described in this sentence. The Liquidator acknowledges that Security Life retains the right to pursue damages against the Insured and/or the Producers to the extent set forth in this Agreement. Security Life agrees that, in any action to recover such damages, it will voluntarily disclose only the total amount of the Settlement Funds.

If, in an action by Security Life to recover such damages and except as otherwise described herein, or in any other legal or regulatory action or proceeding, any person requests that Security Life produce this Agreement, disclose the terms of this Agreement, or file this Agreement with the court, Security Life agrees that, before producing or filing this Agreement or disclosing any terms, and, in any event, within five (5) business days of receiving notice of the request, Security Life will: (i) provide written notice to the Liquidator by facsimile to the Liquidator and to the Liquidator's counsel (the Office of the Attorney General of the State of New Hampshire and Sheehan Phinney Bass + Green, PA), and cooperate with reasonable efforts by the Liquidator to prevent or limit such disclosure, production or filing; and (ii) request that any disclosure or production of this Agreement be subject to a confidentiality order and any filing of this Agreement be made under seal.

Similarly, should the Liquidator receive a request from any person or entity, in connection with any legal or regulatory action or proceeding (other than filing the Motion or seeking the Approval Order), that the Liquidator produce this Agreement, disclose the terms of this Agreement, or file this Agreement with the court, the Liquidator agrees that, before producing or filing this Agreement or disclosing any terms of this Agreement in connection with any such request, and, in any event, within five (5) business days of receiving notice of the request, the Liquidator will: (i) provide written notice to Security Life by facsimile to Security Life's counsel, Drinker Biddle & Reath LLP, and cooperate with reasonable efforts by Security Life to prevent or limit such disclosure, production or filing; and (ii) request that any disclosure or production be subject to a confidentiality order and any filing of this Agreement be made under seal.

14. **Representation.** The Parties represent, acknowledge, and warrant that they have been represented in negotiations for, and in the preparation of, this Agreement by counsel of their choosing. The Parties represent and warrant that each has read this Agreement or has had it read or explained by counsel, that each understands and is fully aware of its contents and legal effect, that each is voluntarily entering into this Agreement after consultation with counsel, and that the persons signing this Agreement have been duly authorized to do so.

15. **Authority.** Each Party represents and warrants to the other that it has the full power, capacity, and authority to enter into this Agreement (subject, as to the Liquidator, to the Approval Order being entered), that neither of them has sold, assigned, or in any manner transferred, any claims which either of them ever had against the other to any third party, and that no other releases or settlements are necessary from any other person or entity to release and discharge completely the other Party from the claims specified herein.

16. **Counterparts.** This Agreement may be signed in counterparts, and when each Party has signed and delivered one such counterpart or copy thereof, each counterpart or copy shall be deemed an original and, when taken together with the other signed counterparts or copies, shall constitute one integrated contract, which shall be binding upon and effective as to all Parties. Facsimile signatures of the Parties shall have the same effect as original signatures.

17. **Waiver of Breach.** No breach of any provision hereof can be waived except in writing by the Party against whom enforcement of the waiver is sought. Waiver of one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare any other Party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the right of such Party hereunder.

18. **No Presumption Against Drafter.** The undersigned Parties have cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, no presumption shall arise to any Party by virtue of participation in the drafting hereof.

19. **Choice of Law and Venue.** This Agreement shall be governed and construed by the substantive laws of the State of New Hampshire without regard to the choice of law rules of New Hampshire or of any other jurisdiction. Venue of any action relating to this Agreement shall be exclusive to the state and federal courts located in the State of New Hampshire.

20. **Notice to Interest Parties.**

(a) Upon the execution of this Agreement by all the Parties, the Liquidator shall seek an Order from the Court establishing notice and objection procedures for the hearing on the Motion and the proposed terms of this Agreement (to the extent not protected by the seal of the court). Both the motion seeking approval of the notice and objection procedures and the notice and objection procedures established must be acceptable to Security Life. Such motion shall seek approval of the manner of notice to be given to each and every individual or entity that has filed a proof of claim in the Liquidation Proceedings (or to the assignee of such individual or entity if known to the Liquidator), or (to the extent known by the Liquidator) who may hold a claim against Noble, or whose name appears on Noble's books and records as being a creditor, or who is otherwise known by the Liquidator to assert any entitlement to any of the assets of the liquidation estate. The Liquidator represents that he has used his best efforts to comply with the requirements of NH RSA 395 to identify all persons or entities that may be an interested party entitled to submit a claim in the Liquidation Proceedings. Such motion shall also seek approval of the provision of notice by publication in newspapers of general circulation in North Carolina,

the home state of the Insured, and the USA Today, and such notice shall be in a form and use language acceptable to Security Life. Security Life and the Liquidator shall share equally in the cost of the publication notice, provided that Security Life's share shall not exceed \$10,500. The Liquidator shall publish this notice on such terms as approved by the Court.

(b) The Liquidator shall provide notice to these persons or entities of the Motion, the proposed terms of this Agreement, the hearing date on the Motion, and the deadline and manner for service of any objections to the Motion, on such terms as are approved by the Court.

(c) The Approval Order proposed by the Liquidator to approve the Motion will call for the establishment of a bar of claims concerning the matters contemplated by this Agreement, the Policy, and any related agreements to the fullest extent of the Court's jurisdiction (the "Bar of Claims"). The Bar of Claims shall be in the form set forth in Exhibit 2 to this Agreement, and shall provide, in material part, as follows:

No person or entity that is or ever was the insured, the owner or beneficiary of, the holder of a beneficial interest in a trust that is or ever was the owner or beneficiary of, the premium financier of, or an investor in Security Life of Denver Insurance Company ("Security Life") policy no. 1612111 ("the Policy"), or who is or ever was an investor in Noble Trust Company or Aegean Scotia Holdings, LLC (collectively "Investors") or who is or ever was a creditor of Noble Trust Company or Aegean Scotia Holdings, LLC (collectively "Creditors") shall commence, file, or prosecute a suit, arbitration, or other legal proceeding in any court or tribunal or before any arbitral body or panel, or assert any claim or cause of action in any such proceeding or forum, against Security Life or any of its predecessors, successors, assigns, or affiliates, or against their respective directors, officers, or employees in their capacities as such, that is in any manner based on, or seeks any remedy or relief relating to: (1) Security Life having entered into and complied with the Settlement Agreement and Release with the Liquidator by which the Policy was agreed to be void *ab initio*, (2) any such insured, owner, beneficiary, investor or creditor having either (A) dealt or contracted with the Liquidator, Noble Trust Company, and/or Aegean Scotia Holdings, LLC, and each of their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies (collectively hereinafter the "Noble Parties") or (B) invested or agreed to invest in the Policy, in a secondary market transaction related to the Policy, or in rights to

or a fractional interest in the Policy or (C) been named or designated, or agreed or intended to have been named or designated, as a beneficiary of the Policy, regardless of whether any such designation ever was, or was ever agreed or intended to be, irrevocable. Any and all claims and causes of action held by or accruing to any Investors or Creditors against Security Life within the scope of this paragraph, however denominated, regardless of the allegations, facts, law, theories, or principles on which they may be based, including but not limited to claims for damages, contribution, or indemnity, against Security Life, by any Investor or Creditor and by any person who acquired an interest in the Policy from or through an Investor or Creditor, including but not limited to persons that are parties to this proceeding and all others who receive notice of this Order or of this paragraph, whether such claims now exist or have accrued or may in the future exist or accrue, are hereby extinguished, discharged, satisfied, and otherwise unenforceable, all to the fullest extent of the Court's jurisdiction.

Notwithstanding anything in the preceding paragraph, however, nothing in this Order shall prevent any Investor or Creditor from asserting or continuing to assert any claim against the liquidation estate of Noble Trust Company and Aegean Scotia Holdings, LLC.

21. **Death of Insured.** The Parties agree that, as of the Effective Date, the Policy shall be deemed to be void *ab initio* and no individual or entity shall have any rights with respect to the Policy, at law or in equity. The Parties further agree that in the event of the death of the Insured under the Policy prior to the Approval Order becoming Final, no claim shall be submitted to Security Life and no death benefit shall be payable under the Policy.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the date shown next to its signature.

Dated: Jan 23, 2014

Scott V Carney
Security Life of Denver Insurance Company
By: Scott V Carney
Title: Vice President

Dated: _____, 2014

Glenn A. Perlow, Bank Commissioner of the State
of New Hampshire, as Liquidator of Noble Trust
Company and Aegean Holdings, LLC

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the date shown next to its signature.

Dated: _____, 2014

Security Life of Denver Insurance Company

By: _____

Title: _____

Dated: 1/21, 2014



Glenn A. Perlow, Bank Commissioner of the State of New Hampshire, as Liquidator of Noble Trust Company and Aegean Holdings, LLC

Exhibit 1

Liquidator's Certification of Surrender

I, Glenn A. Perlow, as liquidator for Noble Trust Company and Aegean Scotia Holdings, LLC, hereby surrender all Policy Documents, as defined in that settlement agreement dated _____, by and between myself, on the one hand, and Security Life of Denver Insurance Company, on the other hand, to Security Life of Denver Insurance Company. I certify that, in my capacity as successor liquidator for Noble Trust Company and Aegean Scotia Holdings, LLC, I claim no further rights and interests in the Policy Documents, and acknowledge that the policy to which they relate is hereby deemed void *ab initio*.

Dated _____

Exhibit 2
Bar of Claims

No person or entity that is or ever was the insured, the owner or beneficiary of, the holder of a beneficial interest in a trust that is or ever was the owner or beneficiary of, the premium financier of, or an investor in Security Life of Denver Insurance Company ("Security Life") policy no. 1612111 ("the Policy"), or who is or ever was an investor in Noble Trust Company or Aegean Scotia Holdings, LLC (collectively "Investors") or who is or ever was a creditor of Noble Trust Company or Aegean Scotia Holdings, LLC (collectively "Creditors") shall commence, file, or prosecute a suit, arbitration, or other legal proceeding in any court or tribunal or before any arbitral body or panel, or assert any claim or cause of action in any such proceeding or forum, against Security Life or any of its predecessors, successors, assigns, or affiliates, or against their respective directors, officers, or employees in their capacities as such, that is in any manner based on, or seeks any remedy or relief relating to: (1) Security Life having entered into and complied with the Settlement Agreement and Release with the Liquidator by which the Policy was agreed to be void *ab initio*, (2) any such insured, owner, beneficiary, investor or creditor having either (A) dealt or contracted with the Liquidator, Noble Trust Company, and/or Aegean Scotia Holdings, LLC, and each of their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies (collectively hereinafter the "Noble Parties") or (B) invested or agreed to invest in the Policy, in a secondary market transaction related to the Policy, or in rights to or a fractional interest in the Policy or (C) been named or designated, or agreed or intended to have been named or designated, as a beneficiary of the Policy, regardless of whether any such designation ever was, or was ever agreed or intended to be, irrevocable. Any and all claims and causes of action held by or accruing to any Investors or Creditors against Security Life within the scope of this paragraph, however denominated, regardless of the allegations, facts, law, theories, or principles on which they may be based, including but not limited to claims for damages, contribution, or indemnity, against Security Life, by any Investor or Creditor and by any person who acquired an interest in the Policy from or through an Investor or Creditor, including but not limited to persons that are parties to this proceeding and all others who receive notice of this Order or of this paragraph, whether such claims now exist or have accrued or may in the future exist or accrue, are hereby extinguished, discharged, satisfied, and otherwise unenforceable, all to the fullest extent of the Court's jurisdiction.

Notwithstanding anything in the preceding paragraph, however, nothing in this Order shall prevent any Investor or Creditor from asserting or continuing to assert any claim against the liquidation estate of Noble Trust Company and Aegean Scotia Holdings, LLC.

EXHIBIT B

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**ORDER APPROVING SETTLEMENT AGREEMENT AND RELEASE
WITH SECURITY LIFE OF DENVER INSURANCE COMPANY**

Upon consideration of the Liquidator's Motion and Incorporated Supporting Memorandum for Approval of Settlement Agreement and Release With Security Life of Denver Insurance Company dated January 30, 2014 (the "Motion") pursuant to which Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively), seeks approval of a Settlement Agreement and Release by and between the Liquidator and Security Life of Denver Insurance Company (the "Settlement Agreement"); due written notice of the Motion, the hearing on the Motion and the deadline for filing objections thereto having been given and served upon all creditors, investors, and other interested persons entitled thereto, including by publication in the manner specified by this Court's Order Approving Notice and Objection Procedures for Hearings on Motions for Approval of Settlement and Release Agreements dated _____, 2014 (the "Procedures Order"); this Court having reviewed the Motion, the Affidavit of Robert A. Fleury in Support of the Motion and the unredacted Settlement Agreement filed under seal in accordance with this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012; there being no objections to the Motion; having heard the arguments and statements of counsel, and being otherwise fully advised in the premises; and having found that approval of the Settlement Agreement is an appropriate and prudent exercise

of the Liquidator's judgment, is fair and reasonable and is in the best interests of this estate and its creditors; and, after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted, and the Settlement Agreement is approved. The Liquidator, Security Life of Denver Insurance Company ("Security Life") and all other parties are authorized to take all steps and execute all documents necessary or convenient to consummate or otherwise enter into the Settlement Agreement. Neither the Liquidator nor Security Life shall have or incur any liability to any person or entity with respect to any of the actions required or permitted to implement the Settlement Agreement or for having entered into the Settlement Agreement.

2. Having complied with the Procedures Order, the Liquidator has provided adequate and sufficient notice to investors, creditors, and any and all other interested persons whose interests may be affected by the approval and implementation of the Settlement Agreement, of the hearing on the Motion, the issues to be decided at the hearing, and the deadline for filing objections. Accordingly, the Liquidator has complied with all applicable requirements of due process with respect to the Motion and the relief requested therein.

3. The Settlement Agreement shall not become effective unless and until this order becomes final. This order each shall become final on the date that it is no longer subject to appeal, or in the event of an appeal(s), has been affirmed after all appeals therefrom have been exhausted ("Final").

4. Upon this Order becoming Final, the Policy¹ shall be void *ab initio* as of the Effective Date of the Settlement Agreement, and no individual or entity shall have any rights

¹ Capitalized terms used in this Order and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Settlement Agreement.

with respect to the Policy, at law or in equity. In the event of the death of the Insured under the Policy prior to this Order becoming Final, no claim shall be submitted to Security Life and no death benefits shall be payable under the Policy.

5. Within ten (10) business days of this order becoming Final, the Liquidator will transmit to Security Life a signed certification, confirming that the Liquidator relinquishes all rights and interest in the Policy Documents as well as the Policy, including the original Policy (the "Certification"). The provision of the Certification shall be deemed a constructive tender of the Policy Documents, and shall be the surrender by the Liquidator of the Policy as confirmation that it is void *ab initio*. Regardless of the degree to which the Liquidator transmits the Policy Documents to Security Life and/or provides the Certification to Security Life, the Policy shall be deemed to be officially surrendered as soon as the Settlement Funds (defined below) are paid to the Liquidator.

6. The Liquidator is authorized to utilize the Policy Documents as evidence in the course of administering any claim against the liquidation estate in connection with the Policy. Any such use by the Liquidator of the Policy Documents will not impact the fact that the Policy has been surrendered and is void *ab initio*.

7. Security Life shall pay a litigation settlement payment of a confidential sum as set forth in the Settlement Agreement (the "Settlement Funds") within ten (10) business days after the Liquidator's delivery of the Certification to Security Life, but in any event no later than twenty (20) business days after this Order becomes Final.

8. Upon this Order becoming Final, Security Life and the Liquidator shall be deemed to have released each other from any and all claims in connection with, arising out of, or in any way related to the subject matter of the Policy, and both Security Life and the Liquidator are hereby released from liability associated with any such claims, provided, however, Security

Life retains the right to institute any action or pursue any claims it might have against Global Financial Investors, Griffin Financial Group, Inc., Ted N. Griffin, or Kerry Piandes (collectively, the "Producers"), and the Insured.

9. The Liquidator shall not pursue any action against any person or entity (including the Producers) not released in the Settlement Agreement related to the subject matter of the Policy. However, if such person or entity asserts a claim (whether legal or equitable, in any form or manner) against the liquidation estate or in connection with the Liquidation Proceeding, the Liquidator shall have the right to object to and defend against any such claim. In the course of defending any claim asserted against the liquidation estate by any such person or entity, the Liquidator shall not assert any claims seeking affirmative relief against such person or entity.

10. All the releases set forth in the Settlement Agreement shall be binding on any and all parties asserting an interest in the Policy. Any and all claims concerning the matters contemplated by the Settlement Agreement, the Policy, and any related agreements are forever barred as set forth in Paragraph 11.

11. No person or entity that is or ever was the insured, the owner or beneficiary of, the holder of a beneficial interest in a trust that is or ever was the owner or beneficiary of, the premium financer of, or an investor in the Policy, or who is or ever was an investor in Noble Trust Company or Aegean Scotia Holdings, LLC (collectively "Investors") or who is or ever was a creditor of Noble Trust Company or Aegean Scotia Holdings, LLC (collectively "Creditors") shall commence, file, or prosecute a suit, arbitration, or other legal proceeding in any court or tribunal or before any arbitral body or panel, or assert any claim or cause of action in any such proceeding or forum, against Security Life or any of its predecessors, successors, assigns, or affiliates, or against their respective directors, officers, or employees in their capacities as such, that is in any manner based on, or seeks any remedy or relief relating to: (1) Security Life having

entered into and complied with the Settlement Agreement and Release with the Liquidator by which the Policy was agreed to be void *ab initio*, (2) any such insured, owner, beneficiary, investor or creditor having either (A) dealt or contracted with the Liquidator, Noble Trust Company, and/or Aegean Scotia Holdings, LLC, and each of their respective predecessors, successors, heirs, administrators, assigns, partners, officers, directors, employees, agents, representatives, trustees, attorneys, affiliates and all affiliated companies (collectively hereinafter the "Noble Parties") or (B) invested or agreed to invest in the Policy, in a secondary market transaction related to the Policy, or in rights to or a fractional interest in the Policy or (C) been named or designated, or agreed or intended to have been named or designated, as a beneficiary of the Policy, regardless of whether any such designation ever was, or was ever agreed or intended to be, irrevocable. Any and all claims and causes of action held by or accruing to any Investors or Creditors against Security Life within the scope of this paragraph, however denominated, regardless of the allegations, facts, law, theories, or principles on which they may be based, including but not limited to claims for damages, contribution, or indemnity, against Security Life, by any Investor or Creditor and by any person who acquired an interest in the Policy from or through an Investor or Creditor, including but not limited to persons that are parties to this proceeding and all others who receive notice of the Motion, this Order or of this paragraph, whether such claims now exist or have accrued or may in the future exist or accrue, are hereby extinguished, discharged, satisfied, and otherwise unenforceable, all to the fullest extent of the Court's jurisdiction.

12. Notwithstanding anything in the preceding paragraph, however, nothing in this order shall prevent any Investor or Creditor from asserting or continuing to assert a claim against the liquidation estate of Noble Trust Company and Aegean Scotia Holdings, LLC.

13. The surrender of the Policy shall be free and clear of all liens, claims and interests in the Policy of any kind or nature whatsoever held by any individual or entity. All such liens, claims and interests against the Policy shall be subject to allowance or disallowance as part of the claims adjudication process in the Liquidation Proceeding, including under any Plan of Liquidation that this Court may approve.

So Ordered.

Dated: _____, 2014

Hon. Larry M. Smukler